

March 27, 2019

VIA HAND DELIVERY



Ann Gasser
Marion County Hearings Officer
PO Box 45000
Salem, OR 97309

RE: Zone Change/Comprehensive Plan/Conditional Use Case 19-002/ TLM Holdings LLC
Our File No: 25687

Dear Honorable Hearings Officer Gasser:

As you know, we represent TLM Holdings LLC, an Oregon limited liability company ("**Applicant**"), with respect to the above-identified land use application (the "**Application**") for the property located at 22515 Airport Rd NE in Aurora, Oregon (the "**Subject Property**"). After review of the record as of March 21, 2019 in response to the Application, we submit the following responses to questions and concerns raised by interested parties. Attached hereto as **Exhibit 1** is an index of the comment letters submitted to date in opposition of the Application.

The comment letters primarily raise generalized concerns about various issues. ORS 197.763(1) requires that "[a]n issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue." ORS 197.763(1). In other words, issues must be raised with sufficient specificity for the Applicant and the hearings officer to identify the criteria at issue and respond to the issue. In this matter, the comments did not identify a specific criterion that the Applicant allegedly failed to satisfy, and most comments were not specific enough to identify a criterion. Applicant is not obligated to guess as to what specific issues concerning the applicable criteria the opponents intend to raise. Nevertheless, Applicant has understood the comments to raise issues with the following:

Traffic:

Comment Letters 1-6 and 8-11 primarily raise general concerns regarding heavy traffic in the area and concerns regarding the Application adding to the current traffic levels. Generalized concerns regarding increased traffic as the result of the approval of the Application, including an expression of general safety concern, is not an adequate basis to deny the Application. Applicant's traffic engineers, DKS Associates, submitted a Transportation Impact Analysis ("**TIA**") on behalf of Applicant in order to

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demonstrate the Application's compliance with Marion County approval criteria, Goal 12, and OAR 660-012. The TIA studied and reported on the existing conditions of the road network in the surrounding area, as well as the short-term and long-term project impacts. This study assisted DKS in determining the project's potential impact on the surrounding facilities and how to mitigate its impacts.

Trip Generation, Trip Distribution, and Mitigation

Concern: The traffic data is outdated.

Comment Letters 2, 3, 4, 6, 8, 10, and 11 have cast doubt on the validity of Applicant's TIA based on a misconception about the data collection. These letters argue that the traffic data was collected in 2015 and, therefore, is outdated.

Response: While the traffic study was initiated in 2015, the traffic counts were updated and collected in 2017. See Memo from Dr. Lacy Brown dated March 26, 2019 (the "*Brown Memo*"). The data is appropriate and current.

Concern: The parking spaces on the site plan are inconsistent with the description in the TIA.

Comment Letters 2 and 8 from Benjamin Williams of the Friends of French Prairie, and Comment Letters 10 and 11 noted that the parking spaces on the site plan were inconsistent with the number of parking spots identified in the TIA and that the discrepancy could invalidate the trip generation estimates.

Response: While there was an inadvertent discrepancy between the identified parking spots in the TIA and the number of spots on the submitted site plan, this discrepancy does not affect the estimated trip generation which was calculated based on building square footage only and does not take into account the number of parking spots. See Brown Memo. The contemplated number of parking spaces will not affect the estimated trip generation.

Concern: The ratio of hangar space to office space.

Another issue raised by Mr. Williams in Comment Letters 2 and 8 and Comment Letter 11 was the validity of the TIA's traffic generation estimates based on the projected ratio of hangar/shop space to office space. The concern was that the ratio was derived from an estimate by the developer which could change at any time.

Response: The traffic engineers based the analysis on a "reasonable worst case" land use assumption, not an analysis of the proposed development. DKS did not solely rely on representations by the developers to project the ratio of hangar space to office space. Industrial areas typically include a ratio of 10-15% office space. Out of an abundance of caution, the worst-case scenario assumed a ratio of 44% office space for the project. Based on that ratio, the traffic engineers calculated the potential trips based on the ITE Trip Generation Manual. See Brown Memo.

Concern: The TIA does not consider the increased traffic from the Dundee Bypass.

Comment Letters 2 and 8 from the Friends of French Prairie, and Comment Letters 4, 10, and 11 describe concerns that the TIA did not take into account increased traffic on Ehlen Road due to the Dundee Bypass and population growth in Canby.

Response: The TIA included a 2% per year background growth rate to account for population growth in the region, including Canby. This approach is a standard methodology utilized by ODOT and approved by Marion County. The TIA properly accounts for population growth in the surrounding area. See Brown Memo. DKS has found no evidence that the Newberg-Dundee Bypass has substantially affected traffic patterns or volumes beyond the 2% growth projections. ODOT and Marion County traffic engineers have reviewed and approved the analysis in the TIA. Based on subsequent discussions with ODOT, ODOT traffic engineers have confirmed that based on the limited traffic volume data available since the Bypass opened, there has not been a significant increase in traffic volume in the area.

Concern: Mitigation did not provide for signalization of Airport/Ehlen.

Comment Letters 2, 8, 10, and 11 also commented that the recommended mitigation in the TIA did not include signalization for the Airport Road and Ehlen Road intersection.

Response: After conferring with Marion County and ODOT, DKS has recently revised its proposed mitigation and planning level to include signalization at the intersection of Airport and Ehlen. See Revised Proportionate Share Memo. The Revised Proportionate Share Memo now includes a recommended mitigation for the intersection at Airport and Ehlen Roads to include signalization, an eastbound left-turn lane, a westbound right-turn lane, and dedicated southbound left and right-turn lanes with an estimated project cost of two million dollars (\$2,000,000.00).

Concern: The existing use on the Subject Property is improperly accounted for.

The comment letter from Clackamas County (Comment Letter 9) and Comment Letter 10 both argue that the trip generations for the existing use on the Subject Property is inappropriate because they are inconsistent with the actual traffic generated from the site currently.

Response: Similar to the trip generation calculation for the proposed zoning, the calculation for the current zoning is based on a reasonable worst-case scenario under the existing use. A 100,000 square foot size was based on a reasonable floor area ratio for a 16+ acre parcel with a church use. Such a use is permitted, subject to standards in the EFU zone. The Marion County Code allows “[e]xisting religious organizations and cemeteries in conjunction with religious organizations may be maintained, *enhanced*, or *expanded* on the same tract wholly within a farm zone.” (emphasis added). Accordingly, the expansion of the church use to a substantially larger footprint is a reasonable worst-case scenario to estimate.

Additionally, DKS ran a sensitivity analysis of the intersection operations to determine the impact of the trip generations without accounting for traffic reductions for the existing use. Without the reduction from the church use, the general findings remained the same, without the need for any additional intersection improvements that hadn’t already been identified for mitigation. Some improvements would have been triggered sooner (short term compared to long term) based on this analysis, but the recommended improvements and mitigation remain the same, even without subtracting trips based on the existing use.

Concern: The trip distribution on Airport Road “seems low.”

Clackamas County stated in Comment Letter 9 that the estimated volume of traffic traveling north “seems low (5%) relative to OR-551 (30%).” They indicated that they believe a higher percentage of

drivers will use Airport Road based on the fact that the site access would be on Airport Road and it would provide a direct route to I-5.

Response: DKS is confident in its analysis of the trip distribution. While I-5 can be accessed from Airport Road, this route requires drivers to make a left-hand turn at Miley Road, which is unsignalized and currently exceeds mobility targets. DKS anticipates a much larger percentage of drivers would opt to access I-5 from OR-551 which offers easy, direct access to I-5. The 5% of traffic anticipated to head north on Airport Road is traffic driving to the Charbonneau residential area.

Concern: The TIA did not evaluate the intersection at Airport and Miley Roads and did not plan to mitigate its impact on the intersection.

In Comment Letter 9, Clackamas County argues that the proposed zone change may create a significant effect at the intersection of Airport and Miley, nearly two and a half miles from the Subject Property. Comment Letter 6 from the City of Wilsonville requests the project contribute, based on expected traffic, to the signalization of the intersection.

Response: Applicant is confident in their trip generation and trip distribution calculations and determined that the impact to this intersection is so minimal that it does not warrant a full evaluation. DKS anticipates less than 8 total trips to utilize the intersection during the AM peak hour (the time period the intersection is exceeding mobility standards). Even if this trip impact was doubled, the trips would still be less than the 20 daily trips that would trigger an evaluation on Clackamas County roadways. Marion County and ODOT traffic engineers have both reviewed and approved Applicant's trip generation and trip distribution.

Concern: Additional Safety Improvements

Clackamas County, in Comment Letter 9, has recommended that reflective signal head backplates be considered to improve signal visibility and overall safety at the Airport and Arndt intersection and the OR-551 and Arndt intersection.

Response: As the comment reflects, these intersections are located outside of Clackamas County jurisdiction. Applicant has worked with ODOT and Marion County traffic engineers to determine the appropriate mitigation to account for Applicant's impact on the surrounding facilities. Both jurisdictions have indicated their satisfaction with the proposed mitigation. Applicant is not responsible for the all traffic to the affected intersections, nor is it responsible for resolving all of the traffic impacts at the affected intersections. Rather, the Applicant is required to account for its impact at the affected intersections. The proposed mitigations account for Applicant's impact. There is no evidence that the proposed development itself requires replacement of signal head backplates in order to make them reflective.

Concern: No traffic impact assessments have been completed.

Comment Letter 1, which appears to have originally been submitted in opposition to the runway extension, argues that "essentially no traffic impact assessments have been done and few surface road improvements....."

Response: Applicant has completed an extensive traffic study and submitted a TIA with proposed mitigations to account for its traffic impacts. Additionally, Applicant has completed a proportionate

share analysis to determine the full extent of Applicant's impact on the surrounding traffic facilities. This comment was presumably in response to the proposed runway extension, and not directed toward this specific Application.

Applicant's TIA was completed in accordance with the guidelines set out in the ITE Trip Generation Manual. Marion County and the Oregon Department of Transportation traffic engineers have reviewed the TIA and Applicant's proposed mitigation, and substantially concur with the trip generation and distribution analysis contained in the TIA. None of the submitted comment letters offer argument sufficient to show that Applicant has failed to satisfy any of the criteria with regard to Goal 12, OAR 660-012, or any other relevant criteria in the Application.

State of Current Road System and Future Growth

Several comment letters raised general concerns about the traffic in the area, the future growth, and the potential impact by the proposed development.

Concern: the current road system is overloaded

Comment Letters 1, 2, 3, 4, 5, and 8 mention that that the road system surrounding the Subject Property is currently overloaded. Comment Letters 2 and 8 from the Friends of French Prairie point out that at current levels the intersection at Airport and Arndt exceeds Marion County operating standards during the AM and PM peak hours, the intersections at OR-551 and Arndt Road and OR-551 and Ehlen Road exceed ODOT mobility targets for the AM and PM peak hours, and the intersection at Airport and Ehlen Roads fails to meet the Marion County operating standard in the peak hour. Additionally, based on the TIA's short-term (2022) and long-term (2037) scenarios, the above-mentioned intersections exceed mobility targets or operating standards.

Response: As the comments and the TIA pointed out, there is significant traffic challenges in the area, and several of the intersections are exceeding operating standards. However, the impact created by the proposed development to the overall traffic at the affected intersections is relatively insignificant (between 1.7% and 5.7% depending on the intersection). Applicant is committed to mitigating its impact on the traffic system and has tasked its traffic engineers with calculating its proportionate share of the traffic mitigation projects and is willing to pay a proportionate share fee to Marion County in order to help facilitate improvements on the affected intersections. See Revised Proportionate Share Memo.

Marion County and ODOT traffic engineers have reviewed and approved of the Applicant's proportionate share analysis.

Noise:

In Comment Letters 1, 5, and 10, three citizens submitted comments to Marion County raising concerns about noise related to the airport. One such comment (Comment Letter 1), appears to have been submitted in response to the proposed Aurora Airport runway extension application. The comment states that the "airport has a noise abatement procedure, but it is voluntary and frequently violated and the noise problems for Aurora, Charbonneau and Wilsonville promise to worsen not improve."

Response: Applicant's land use application is a request to develop property adjacent to the Aurora Airport for airport-related uses. Noise is inherent in aviation, and Applicant's airport related uses

necessarily must be located near the airport. However, Applicant will comply with any applicable noise ordinances required by the County or the Department of Aviation. Applicant will not create any noise that isn't necessary for their airport-related uses and operations. The Applicant's request is not tied to any extension of the Aurora Airport runway.

Septic System:

A question was raised regarding the existing septic systems on the Subject Property and whether they would be sufficient to support the proposed development on the Subject Property.

Response: As outlined in the Application and the Environmental Management Systems, Inc. report attached thereto as Exhibit CC, Applicant has identified multiple DEQ approvable options that could be utilized for development of the Subject Property. EMS reported that each of the contemplated options appear feasible for the site to attain wastewater treatment. Further, the Applicant can tie into the existing Aurora Airport septic system and can add an additional pod to the current system to meet the demand of the proposed project.

Annexation:

One citizen comment (Comment Letter 1) stated that "the airport's sewer and water problems likely cannot be solved without annexation by the City of Aurora, which the airport opposes."

Response: Applicant has conducted studies on the Subject Property prior to development to ensure that water, sewer and other facilities will be sufficient to serve the Subject Property. Potable water will be provided by a well onsite, and Applicant has identified multiple feasible options for wastewater management. Fire protection will come from the Aurora Airport Water Control District. These services are presently available to the properties in the area or will be established during development of the Subject Property consistent with the relevant review criteria requiring the appropriate level of public facilities and services to be provided in a timely manner. All of the public facilities necessary for the service of the proposed development on the Subject Property are available in the area and are adequate to serve the proposed use.

Geological:

Comment Letter 1, which appears to originally have been submitted in opposition to the runway expansion argued that the airport would not be a viable emergency operations location because the southern half of the existing airport is subject to liquefaction in the event of a major earthquake.

Response: Applicant has engaged Geodesign, Inc. to study the soil at the Subject Property and draft a report on this issue. The Geodesign report is being submitted concurrent with this letter. The preliminary conclusion of the Geodesign report is that the Subject Property is a relatively low seismic risk. Additionally, the report estimates a total post-liquefaction settlement to the Subject Property of less than one (1) inch during a design-level earthquake, and the differential settlement across the site would be less than approximately one-half of the total liquefaction settlement, less than ½". Lateral spreading was not a design consideration because there are no open faces near the project. Additionally, the study did not encounter any soil capable of amplifying ground motions. As the site and surrounding area are relatively flat, seismically induced landslides are not considered a site hazard. GeoDesign does not anticipate any seismic-induced settlement in addition to liquefaction-induced

settlement, nor do they anticipate any subsidence or uplift as a design concern. The anticipated ground accelerations are below the threshold required to induce lurching of site soil, and seiches and tsunamis are not a hazard in the vicinity. Additionally, despite raising this concern, this comment does not raise questions about any of the applicable review criteria that Applicant is required to comply with.

Public Process:

Comment Letter 1 submitted to Marion County raised issues about the public process in relation to the Application. This comment appears to have initially been submitted in opposition to the Aurora Airport runway expansion. The first argument relating to public process has to do with the escalation in cost for the runway extension. Second, the comment argues that there has been a “broken public process” compounded by a lack of clarity about the distinction between the function of the airport master plan and the land use impacts under the jurisdictions of local governments.

Response: This issue is related to the proposed runway extension, not Applicant’s pending Application, therefore this comment is not applicable. Applicant’s land use Application is subject to jurisdiction in Marion County, and will proceed through the proper public process which includes the opportunity for public comment and testimony, including comment and testimony from other jurisdictions. Additionally, the comment mentioned concerns about who would benefit from airport expansion. While this is an application for a zone change on private property and the property owner will derive a benefit approval of the Application, approval of the Application will also create benefits for the surrounding communities in the form of employment opportunities, patronage of the surrounding businesses, restaurants, and hotels, and development of an emergency preparedness center.

Environmental Impact:

Comment Letters 1 and 6 raised concerns regarding the environmental impact of development on the Subject Property. Comment Letter 1, which was apparently submitted in opposition to the proposed runway extension, raised concerns about air pollution impact due to expansion of the airport. The City of Wilsonville simply lists “Environmental Concerns” as a bullet point list of issues exacerbated by a lack of coordination between jurisdictions and requests stormwater drainage to be handled as close to the site as feasible and requests any required permits be obtained.

Response: All of the land and future buildings on the Subject Property will be maintained and operated in compliance with all applicable Oregon Department of Environmental Quality standards. Additionally, all aircraft to be located on the Subject Property will comply with all applicable aircraft emission regulations set out by the United States Environmental Protection Agency. Applicant will apply for and comply with any required environmental permits. Applicant submits concurrent with this document a letter from Mackenzie Engineering addressing civil engineering questions and concerns.

Oregon Department of Aviation (Comment Letter 7):

Jeff Caines submitted a comment on the Application on behalf of the Oregon Department of Aviation. The Department of Aviation requested several general conditions of approval for development on the Subject Property.

Response: Applicant has reviewed and is comfortable complying with the conditions proposed by the Department of Aviation.

City of Wilsonville (Comment Letter 6):

Miranda Bateschell, Planning Director for the City of Wilsonville ("*Wilsonville*"), submitted a comment letter on behalf of Wilsonville. Wilsonville stated that the city does not support conversion of EFU land to non-agriculture uses. As Applicant has pointed out in the Application, the Subject Property is surrounded on three sides by airport uses and on the fourth by Airport Road. It is unclear if the Subject Property has ever been farmed; however, it was used as a church camp since at least 1977. The Subject Property is a prime logical candidate for airport uses.

Wilsonville also requested, as conditions of approval, full implementation of all traffic mitigation projects identified in the TIA. Applicant is committed to mitigating its traffic impact, whether it be through paying a proportionate share fee or constructing improvements at an affected facility. To the extent Wilsonville is recommending Marion County require the Applicant to fund 100% of the costs of all identified mitigation projects, such a condition would be grossly disproportionate to Applicant's impact on the transportation facilities and would be an illegal taking under *Nolan and Dolan*.

Wilsonville further requests the County require applicant to commission an additional TIA. This request is based on the misconception that Applicant's traffic data was collected in 2015 and is therefore outdated. As previously stated, while Applicants traffic study began in 2015, the traffic data was actually collected in 2017, the data is appropriate and current.

Additionally, Wilsonville encouraged Marion County to coordinate with Clackamas County to require the project contribute capital to signalization of the Airport Road/Miley Road intersection under Clackamas County jurisdiction. This intersection was not included or approved in the scope of work by the Oregon Department of Transportation and Marion County.

The City would like to see stormwater drainage needs to be handled as close to the site as possible to avoid impacting surrounding rivers and streams. Applicant's consultant, Mackenzie Engineering, has determined that the development, as designed, can feasibly detain stormwater on site and can comply with Marion County standards.

Finally, Wilsonville argues that development of lands around the airport lands has lacked coordination between multiple jurisdictions that have exacerbated issues and lost opportunities including: transportation impacts, alternative transportation options, unfair competition to adjacent jurisdictions, environmental concerns, and potential harm to the agricultural cluster. In response to this comment, Applicant contends that it has submitted its Application through the proper land use procedures, neighboring jurisdictions have been contacted and encouraged to comment on the Application. Additionally, Applicant is willing to mitigate its impact on the traffic system, comply with all necessary environmental requirements, and will not negatively impact any surrounding agricultural lands.

City of Aurora (Comment Letter 4):

Mayor Kris Sallee of the City of Aurora submitted a comment letter to Marion County on the City's behalf in opposition to the Application. Ms. Sallee's letter primarily focuses on traffic mitigation and road improvements. Additionally, she reiterates the misconception that Applicant's TIA is outdated and argues that Applicant has not considered potential traffic from the Dundee Bypass. As stated above, the traffic data included in the TIA was collected in 2017, not 2015. Additionally, there is no evidence that the Dundee Bypass has substantially affected traffic patterns and volumes in the vicinity of the Subject Property. DKS has consulted with ODOT on this issue and ODOT has confirmed that the traffic volume

data available since the Bypass has opened does not suggest a significant increase in traffic volume in the area.

Applicant has been in contact with officials at the City of Aurora and is working closely with them to address their concerns and potentially earn their support of the Application.

Clackamas County (Comment Letter 9):

Clackamas County has submitted a comment letter, primarily citing traffic concerns. Applicant has addressed those issues in the traffic section above. Additionally, DKS will be contacting Clackamas County engineers in order to discuss their methods and conclusions.

City of Aurora (Comment Letter 12):

The City of Aurora submitted an unsigned comment letter raising several issues with Applicant's TIA, particularly with regard to Applicant's trip generation calculations. Due to the late submission of the comment, Applicant has not been able to respond substantively to each point in writing. Many of the issues raised have been raised by other commenters and been addressed by Applicant and DKS. Applicant is confident that the TIA was done properly, and in compliance with all applicable standards and methods. ODOT and Marion County traffic engineers have reviewed and approved the study area, trip generation, trip distribution, and proposed mitigation.

Conclusion:

In conclusion, Applicant appreciates the opportunity to review and respond to the concerns of interested parties regarding the proposed project. The Subject Property has long been identified by the Aurora Airport as a logical location for incorporation into the airport, and many commenters agree with the logic of this incorporation. Many of the concerns raised in relation to the project stem from issues and conditions that currently exist in the area and would be minimally affected by the development of the Subject Property. Applicant is committed to addressing and mitigating any impact the project has on the surrounding area, responding to concerns of interested parties, being a good neighbor to surrounding property owners, and developing a property that will be of great benefit to the community as a whole.

Thank you for your consideration of these issues.

Sincerely,



MARK D. SHIPMAN
mshipman@sglaw.com
Voice Message #310

MDS/NKR:
Enclosures



ITEM	COMMENTS SUBMITTED TO MARION COUNTY NEUTRAL/OPPOSITION	DATE
1	Carol Gibson	02/14/19
2	Benjamin Williams (Friends of French Prairie)	2/21/19
3	Michael Iverson (Aurora Farms)	2/23/19
4	Kris Sallee, Mayor (City of Aurora)	02/25/19
5	Frank Burger (Prairie View Estates, Annex No. 1, HOA)	02/25/19
6	Miranda Bateschell, Planning Director (City of Wilsonville)	02/26/19
7	Jeff Caines, AICP (Oregon Department of Aviation- ODA)	02/25/19
8	Benjamin Williams (Friends of French Prairie)	3/21/19
9	Christian Snuffin, Joseph Marek for Clackamas County Transportation Engineering	3/22/19
10	Janice P. Shea	3/25/19
11	Charbonneau Country Club	3/26/19
12	City of Aurora (unsigned)	3/26/19